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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,473	02/12/2004	Toshihiko Miyazaki	81754.0109	2322

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EXAMINER

QUINTO, KEVIN V

ART UNIT

PAPER NUMBER

2826

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/777,473

Applicant(s)

MIYAZAKI, TOSHIHIKO

Examiner

Kevin Quinto

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) 3-8 is/are withdrawn from consideration.  
5) ☒ Claim(s) 1, 2 and 9-13 is/are allowed.  
6) ☒ Claim(s) 14-18 is/are rejected.  
7) ☒ Claim(s) 19 and 20 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12 February 2004.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1, 2, and 9-20 in the reply filed on November 12, 2004 is acknowledged.
2. Claims 3-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 12, 2004.

### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject-matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bensahel et al. (USPN 6,372,581 B1).

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6. In reference to claim 14, Bensahel et al. (USPN 6,372,581 B1, hereinafter referred to as the "Bensahel" reference) discloses a similar device. Figure 1d illustrates a semiconductor device with a silicon substrate (1) and a gate dielectric (3, 4). The gate dielectric has peak nitrogen concentration which is located in a range of 0.5 nm – 1.5 nm from a surface and in a range of 0.3 nm – 2.0 nm from an interface thereof with the silicon substrate (column 4 – claim 1). The element concentration peak of nitrogen is  $7 \times 10^{21}$  or greater (column 4, claim 3). Niimi (United States Patent Application Publication No. US 2004/0070046 A1) states that the introduction of nitrogen into the gate dielectric reduces gate leakage current (p. 1, paragraph 4). Therefore the Bensahel gate dielectric with nitrogen meets the limitation that the semiconductor device has "a means for reducing an amount of gate leakage."

7. In reference to claims 15 and 16, figure 1d shows that the silicon substrate (1) is planar. The examiner notes the limitations regarding the processes used to fabricate the semiconductor device in claims 15 and 16. However this places claims 15 and 16 into the form of a **product-by-process claim**:

Note that a "product by process" claim is directed to the product per se, no matter how actually made, *In re Hirao*, 190 USPQ 15 at 17 (footnote 3). See also *In re Thorpe*, 227 USPQ 964, 966; *In re Luck*, 177 USPQ 523; *In re Fessmann*, 180 USPQ 324; *In re Avery*, 186 USPQ 161; *In re Wertheim*, 191 USPQ 90 (209 USPQ 554 does not deal with this issue); and *In re Marosi et al.*, 218 USPQ 289, all of which make it clear that it is the patentability of the final product per se which must be determined in a "product by process" claim, and not the patentability of the process, and that an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not. Note that applicant has the burden of proof in such cases, as the above case law makes clear. See also MPEP 2113.

Claims 15 and 16 do not distinguish over the Bensahel reference regardless of the process used to wash the substrate or to planarize the substrate, because

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only the final product is relevant, and not the process of making such as washing with the substrate with a hydrofluoric acid or planarizing the substrate.

8. With regard to claim 17, Bensahel uses a nitrogen monoxide gas (column 3, lines 15-36).

9. In reference to claim 18, Bensahel discloses (column 3, lines 1-5 and column 4, claim 1) forming an oxide layer as a part of the gate dielectric (3, 4).

### ***Allowable Subject Matter***

10. Claims 1, 2, and 9-13 are allowed.

11. Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the examiner is unaware of any prior art which suggests a semiconductor device with a composite gate dielectric which includes an oxide layer and an oxynitride layer with the applicant's specified peak nitrogen concentration at the distance from the substrate within the gate dielectric.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Quinto whose telephone number is (571) 272-1920. The examiner can normally be reached on M-F 8AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KVQ



**NATHAN J. FLYNN**  
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